IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.2147 OF 2005

WITH

CIVIL APPLICATION NO.5478 OF 2005

Shyamlal D. Bania ..Appellant.

Vs.

Municipal Corporation of

Greater Mumbai ..Respondent.

WITH

FIRST APPEAL (ST.) NO.28557 OF 2005

WITH

CIVIL APPLICATION NO.5467 OF 2005

Raghunandan Gokulam ..Appellant.

Vs.

Municipal Corporation of

Greater Bombay ..Respondent.

WITH

FIRST APPEAL (ST.) NO.28551 OF 2005

WITH

CIVIL APPLICATION NO.5465 OF 2005

Samsunnisa Moosa Momim ..Appellant.

Vs.

Municipal Corporation of
Greater Bombay ..Respondent.

WITH

FIRST APPEAL (ST.) NO.28554 OF 2005

WITH

CIVIL APPLICATION NO.5469 OF 2005

Hassan Ali Mukadam ..Appellant.

Vs.

Municipal Corporation of
Greater Bombay ..Respondent.

WITH

FIRST APPEAL (ST.) NO.28560 OF 2005

WITH

CIVIL APPLICATION NO.5471 OF 2005

Akram M.A. Nadvi ..Appellant.

Vs.

Municipal Corporation of

Greater Bombay ..Respondent.

...

Mr.T.J.Jadwani for the Appellant.

Mrs.Geetanjali Joglekar for the BMC.

...

CORAM : DR.D.Y.CHANDRACHUD, J.

20th December, 2005.

P.C. :

Admit. By consent taken up for hearing.

1. The Municipal Corporation issued a notice under Section 351 of the Mumbai Municipal Corporation 1888 on 6th April, 1994 in respect of an unauthorized construction and the schedule to the notice refers to the following unauthorized work that was carried out in the basement of a shopping centre called Mastan Shopping Centre; "unauthorized construction of partition walls at the basement of Mastan Shopping Centre as shown overleaf". The notice contains a sketch map of the nature of the unauthorized work. The Appellant furnished a reply to the notice and submitted inter alia copies of the shops and establishment licence, assessment and electricity bills. The Deputy Municipal Commissioner, by an order dated 27th June, 1994, came to the conclusion that the work is

unauthorized and directed the removal of the work. A suit was instituted before the City Civil Court being L.C. Suit 4213 of 1994 which came to be dismissed by the impugned order dated 10th October, 2005.

2. With the assistance of the learned counsel I have perused the record, pleadings, evidence and documentary material that was relied upon before the Trial Court. A compilation of the relevant documentary material has been tendered before the Court.

3. The case of the Appellant was that he was the original tenant in respect of Gala No.3 in the basement of the shopping centre between 1983 and 1985 and that by an agreement dated 1st February, 1985 the tenanted premises came to be converted into premises on ownership basis. The agreement dated 1st February, 1985 is in respect of a part of the basement which is designated as No.3. The shop number and area have been scored out. The Learned Trial Judge while appreciating the aforesaid document therefore was justified in holding that the agreement does not make any specific reference

to specific shop premises but, that it has some reference to an area of the basement. The Appellant relied upon the assessment record of the Municipal Corporation. The assessment bill of 1999 pertains to 1993-94. In the course of the cross examination the witness for the plaintiff admitted that he had produced only one assessment bill of 1999 and that he had demanded only one assessment bill from the society. In the circumstances, there was absolutely no evidence to show the existence of the structure prior to the datum line of 1st April, 1962. The assessment of the building is prior to 1961-62 but it is evident that the construction of the partition walls in the basement took place much later. Even the earliest rent receipt which was relied upon is of 18th December, 1983 much after the datum line. As the Learned Trial Judge noted, neither was the original owner of the building examined nor was the sanctioned building plan produced to establish that the work had been duly authorized. In these circumstances, the finding of the Learned Trial Judge that the area of the basement has been converted into shops by an unauthorized construction of partition walls is justified and is founded on the evidence on the

record. There is, therefore, no merit in the First Appeals which shall accordingly stand dismissed.

4. On the request of counsel for the Appellants and in order to enable the Appellants to have recourse to their remedies in appeal, the Municipal Corporation is directed not to take coercive steps in pursuance of the order of the Deputy Municipal Commissioner for a period of four weeks from today.

In view of the disposal of the First Appeals, the Civil Applications are rendered infructuous and are accordingly disposed of.